

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KESTON J. MAYERS,

Plaintiff,

-against-

BRAD RACINO; SYRACUSE.COM/NY
CANNABIS INSIDER; ADVANCE MEDIA
NEW YORK; ADVANCE LOCAL MEDIA,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 8/1/2023

1:23-CV-5183 (MKV)

ORDER OF SERVICE

MARY KAY VYSKOCIL, United States District Judge:

Plaintiff Keston J. Mayers, of Freeport, Nassau County, New York, brings this *pro se* action asserting claims of copyright infringement as well as claims under state law, seeking damages and injunctive relief. He sues: (1) Brad Racino, (2) Syracuse.com/NY Cannabis Insider, (3) Advance Media New York, and (4) Advance Local Media. Plaintiff has filed a motion for permission for electronic case filing (ECF 4) as well as a motion for leave to file an amended complaint with a proposed amended complaint (ECF 5 & 6).

By order dated July 20, 2023, the court granted Plaintiff's request to proceed *in forma pauperis* ("IFP"), that is, without prepayment of fees. The Court grants Plaintiff's motion for permission for electronic case filing. The Court also denies Plaintiff's motion for leave to file an amended complaint as unnecessary, *see* Fed. R. Civ. P. 15(a)(1), and directs the Clerk of Court to regard Plaintiff's amended complaint as the operative pleading. The Court further directs service on the defendants.

DISCUSSION

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service.¹ *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP).

To allow Plaintiff to effect service of the amended complaint (ECF 6) on the defendants through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for each of the defendants. The Clerk of Court is further instructed to issue a summons for each of the defendants and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service of a summons and the amended complaint (ECF 6) on each of the defendants.

If the summonses and the amended complaint (ECF 6) are not served on the defendants within 90 days after the date the summonses are issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service).

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

¹ Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served summonses and the amended complaint (ECF 6) until the Court reviewed the amended complaint and ordered that summonses be issued. The Court therefore extends the time to serve until 90 days after the date that the summonses are issued.

CONCLUSION

The Court directs the Clerk of Court to mail an information package to Plaintiff.

The Court also grants Plaintiff's motion for permission for electronic case filing.
(ECF 4.)


The Court further denies Plaintiff's motion for leave to file an amended complaint as unnecessary. (ECF 5.)

The Court additionally directs the Clerk of Court to regard Plaintiff's amended complaint as the operative pleading. (ECF 6.)

The Court also directs the Clerk of Court to issue summonses for the defendants, complete USM-285 forms with the addresses of the defendants, and deliver all documents necessary to effect service of the summonses and the amended complaint (ECF 6) on the defendants to the U.S. Marshals Service.

SO ORDERED.

Dated: 8/1/2023
New York, New York



MARY KAY VYSKOCIL
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

1. Brad Racino
Editor & Publisher of NY Cannabis Insider
220 South Warren Street
Syracuse, New York 13202
2. Syracuse.com/NY Cannabis Insider
220 South Warren Street
Syracuse, New York 13202
3. Advance Media New York
220 South Warren Street
Syracuse, New York 13202
4. Advance Local Media
1 World Trade Center, 39th Floor
New York, New York 10007